

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ANITA J. GOBEL**

Claimant

VS.

**BEECH AIRCRAFT CORPORATION**

Respondent

Self-Insured

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Docket No. 165,123

**ORDER**

Claimant appeals from an Award entered by Special Administrative Law Judge William F. Morrissey dated September 2, 1994.

**Appearances**

Claimant appeared by her attorney, Martin E. Updegraff of Wichita, Kansas. Respondent and insurance carrier appeared by its attorney, David S. Wooding of Wichita, Kansas.

**Record and Stipulations**

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations in the Award.

**ISSUES**

The Special Administrative Law Judge found claimant had not established she suffered an accidental injury arising out of and in the course of her employment. That finding is the only issue to be considered on appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds the decision by the Special Administrative Law Judge should be affirmed.

Claimant alleges she suffered a low back injury arising out of and in the course of her employment over the period from approximately August 1991 through December 9, 1991. Although the Appeals Board agrees with claimant's contention that the Special Administrative Law Judge did not, in all instances accurately summarize the record in the Award, the Appeals Board, nevertheless, agrees with the conclusion reached by the Special Administrative Law Judge.

Claimant saw several physicians and was taken off work in December of 1991. Claimant did not advise her employer of any connection between the back injury and her work until March of 1992. Claimant first went to her family physician with back complaints in November of 1991. The records of her family physician, Dr. Lemons, contained no indication that claimant ever gave a history which related her back complaints to her work. Claimant challenges the finding by the Special Administrative Law Judge that claimant did not tell her physician the pain was related to her job. In fact, Dr. Lemons testified that he talked with claimant about what type of work she was doing and was aware that her work involved lifting and pulling. The Appeals Board agrees this statement in the Award by the Special Administrative Law Judge may not accurately characterize the evidence, but the evidence does not, on the other hand, fully support claimant's assertion that she had told Dr. Lemons that her injury was work related.

Claimant also points out that the Special Administrative Law Judge erred when he found claimant did not make a written claim until she was laid off. Claimant correctly points out that the written claim was, in fact, made in March of 1992, prior to the layoff. Nevertheless, the record indicates claimant was taken off work because of her back complaints in December 1991. She called her employer and reported, both to Mary Walker and to Ken Vaughn, that she would not be able to return to work. She did not, at that time, attribute her complaints in any way to her work. She was not directly asked whether work was causing the problem, but was asked what was wrong with her back.

Finally, the medical evidence does not convincingly tie claimant's complaints to her work. Dr. Lemons indicates he believes the work may have been a contributing factor. However, when asked if he could state to a reasonable degree of medical certainty if there was a connection between the work and claimant's injury, he indicated that he could not. Dr. Drazek also indicated that she could not state, within a reasonable degree of medical probability, that claimant's work was a precipitating factor in the symptomatology. Dr. Abay connects claimant's back complaints to her work, but did not see claimant until 1993.

The above-described factors lead the Appeals Board to conclude that while claimant may have had some complaints of pain during the time she performed her work, claimant has not convincingly established that her low back injury arose out of and in the course of her employment.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated September 2, 1994, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Martin E. Updegraff, Wichita, Kansas  
       David S. Wooding, Wichita, Kansas  
       William F. Morrissey, Special Administrative Law Judge  
       Philip S. Harness, Director